

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

THE HIPSAVER COMPANY, INC.,

Plaintiff / Counterclaim Defendant,

v

JET. POSEY COMPANY,

Defendant / Counterclaim Plaintiff.

Civil Action No. 05-10917 PBS

Hearing Requested

**HIP SAVER’S MOTION *IN LIMINE* TO EXCLUDE
THE 2006 TAMPERE TEST AND TEST RESULTS**

The plaintiff, HipSaver Company, Inc. (“HipSaver”), moves *in limine* to exclude a test and test results conducted at Tampere Laboratories in the Spring of 2006 (“the Tampere Test”). Defendant J.T. Posey (“Posey”) seeks to admit test results from the Tampere Test in order to support claims regarding its Hipster product made in advertisements from as early as 2001. The 2006 Tampere Test is irrelevant and inadmissible for the purpose of supporting Posey’s establishment claims, and particularly to those claims relating to the simulation of a fall because (a) the 2006 Tampere Test results were not cited in the accused advertisements and moreover, did not exist at the time of the advertisements and therefore, could not have been relied upon to make the claims contained in the Garwood Advertisement; and (b) the Tampere Test, even if relevant, is inadmissible hearsay because the commissioned study was not published or subject to peer review and will be offered through Posey’s expert, who has no personal

knowledge of the Tampere Test. The Tampere Test simply cannot be used to support the claims for which it is intended to be offered.

CERTIFICATE PURSUANT TO CIVIL LOCAL RULE 7.1

I hereby certify that on May 10 and May 14, 2007, counsel for HipSaver and counsel for Posey conferred by telephone in a good faith attempt to resolve or narrow the issues presented in this motion but were unable to reach agreement.

Respectfully submitted
The HipSaver Company, Inc.
By its Attorneys,

/s/ Courtney M. Quish
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May 15, 2007

CERTIFICATE OF SERVICE

I certify that this document has been filed through the Electronic Case Filing System of the United States District Court for the District of Massachusetts and will be served electronically by the court to the Registered Participants identified in the Notice of Electronic filing.

/s/ Courtney M. Quish
Courtney M. Quish